UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,166	01/13/2004	Edward B. Keller	07055859	3545

26565 7590 03/20/2009

MAYER BROWN LLP
P.O. BOX 2828
CHICAGO, IL 60690

EXAMINER	
MEINECKE DIAZ, SUSANNA M	

ART UNIT	PAPER NUMBER
3692	

NOTIFICATION DATE	DELIVERY MODE
03/20/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@mayerbrown.com

Office Action Summary	Application No.	Applicant(s)	
	10/757,166	KELLER ET AL.	
	Examiner	Art Unit	
	Susanna M. Diaz	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,11 and 23-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,11 and 23-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. In response to Applicant's request that prosecution be reopened as a result of the new grounds of rejection presented in the Examiner's Answer, prosecution is hereby reopened. Applicant's request that prosecution be reopened is found on page 14 of the reply filed on December 30, 2008. As per 37 C.F.R. § 41.39(b)(1), "A request that complies with this paragraph will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal." 37 C.F.R. § 1.112 addresses treatment of a response to non-final Office action; therefore, Applicant's current amendment (filed December 30, 2008) is hereby treated as a response to non-final Office action.

Claims 1, 6, 7, 8, and 11 have been amended.

Claims 23-29 have been added.

Claims 1-8, 11, and 23-29 are presented for examination.

Response to Arguments

2. Applicant's arguments filed December 30, 2008 have been fully considered but they are not persuasive.

On pages 14-15 of the reply filed December 30, 2008, Applicant argues, "Claim 1 is directed to a method wherein at least one of the steps of identifying a plurality of predictive variables, calculating percent gains, and creating a database scoring

algorithm is performed by a computer. Accordingly, claim 1 passes the machine-or-transformation test for patentability for at least the reason that it is tied to a machine." The Examiner respectfully disagrees. The amendment of claim 1 does not overcome the rejection under § 101 since "at least one of the steps of identifying a plurality of predictive variables, calculating percent gains, and creating a database scoring algorithm" is performed by a computer. The step of "identifying" may merely involve retrieving predictive variables from a database, which would amount to nothing more than insignificant post-solution activity. Note that claims 24 and 25 further define the step of identifying as including a significant calculation step(s); therefore, claims 24 and 25 are deemed to be statutory under 35 U.S.C. § 101.

On page 16 of the reply filed December 30, 2008, Applicant argues that "none of the references – either alone or in combination -- teaches or suggests the steps of 'identifying a plurality of predictive variables from the set of demographic variables...,' 'calculating percent gains…,' 'creating a database scoring algorithm…,' or 'validating the database scoring algorithm.'" These limitations are newly introduced and are addressed in more detail in the revised art rejection below.

Applicant submits that there is no motivation to modify "The E-fluentials" because "The E-fluentials" teaches against use of demographics (pages 16-19 of the reply filed December 30, 2008). The Examiner respectfully disagrees. The Examiner cites the section entitled "Demographics" from "The e-fluentials":

> III. DEMOGRAPHICS
> Overall, *e*-fluentials do not differ much from the general online population. Both groups have an average age of about 42 years and an average household income of

> approximately $53,000. Over half of both populations have a college degree (54% vs. 55% of online users), and a majority (69% vs. 62%) work full time.
> However, *e*-fluentials do differ from typical users on certain characteristics. They are more likely than other users to be male (58% vs. 49%), and a slightly greater number of *e*-fluentials are likely to be single or to have never married (22% vs. 16%). Surprisingly, they are also somewhat more likely to have one or more children (54% vs. 48%).
> The overall similarity of the two populations means that *e*-fluentials cannot easily be identified by demographics alone. As is true with the traditional Roper Influentials, they can only be found by closely examining their attitudes, perceptions and behaviors. (Page 10 of "The e-fluentials")

Clearly, "The e-fluentials" shows that an active correlation is made between e-fluentials (i.e., influential people) and non-influential people. While age and household income tend not to vary much among e-fluentials versus non-influential people, greater disparity among these two populations of individuals is found when comparing gender, marital status, and number of children demographics. Therefore, gender, marital status, and number of children are understood to be better predictive variables for identifying e-fluentials versus non-influential people (as compared to age and household income, for example), thereby supporting the Examiner's assertion that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify e-fluentials' predictive model to incorporate the step of validating the plurality of predictive variables to determine a final set of predictive variables and to create a database scoring algorithm (e.g., by providing demographic data for a second population, wherein the demographic data for the second population corresponds to the final set of predictive variables and applying the database scoring algorithm to the demographic data for the

second population to determine a group of influential individuals, wherein each test data vector corresponds to an individual in the second population, wherein the group of influential individuals represent a subgroup of the second population that is predicted to have a higher probability of being influential with respect to the second population in general) in order to help ensure that the model is taking into account the most effective variables at making accurate predictions.

Also, Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Applicant has not traversed the Examiner's assertions of Official Notice. More specifically, the following statements of Official Notice have been formally established on record as admitted prior art:

Official Notice is taken that it was old and well-known in the art of predictive modeling at the time of Applicant's invention to validate predictive variables (used to create an algorithm) on a second group of test subjects; validation of the predictive variables helps to ensure that the model is taking into account the most effective variables at making accurate predictions.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-8, 11, and 23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A claimed process is eligible for patent protection under 35 U.S.C. § 101 if:

> "(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See Benson, 409 U.S. at 70 ('Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines.'); Diehr, 450 U.S. at 192 (holding that use of mathematical formula in process 'transforming or reducing an article to a different state or thing' constitutes patent-eligible subject matter); see also Flook, 437 U.S. at 589 n.9 ('An argument can be made [that the Supreme] Court has only recognized a process as within the statutory definition when it either was tied to a particular apparatus or operated to change materials to a 'different state or thing' '); Cochrane v. Deener, 94 U.S. 780, 788 (1876) ('A process is...an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing.').[7] A claimed process involving a fundamental principle that uses a particular machine or apparatus would not pre-empt uses of the principle that do not also use the specified machine or apparatus in the manner claimed. And a claimed process that transforms a particular article to a specified different state or thing by applying a fundamental principle would not pre-empt the use of the principle to transform any other article, to transform the same article but in a manner not covered by the claim, or to do anything other than transform the specified article." (*In re Bilski, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008))*

Also noted in *Bilski* is the statement, "Process claim that recites fundamental principle, and that otherwise fails 'machine-or-transformation' test for whether such claim is drawn to patentable subject matter under 35 U.S.C. §101, is not rendered patent eligible by mere field-of-use limitations; another corollary to machine-or-transformation test is that recitation of specific machine or particular transformation of specific article does not transform unpatentable principle into patentable process if recited machine or transformation constitutes mere 'insignificant post-solution activity.'"

(*In re Bilski, 88 USPQ2d 1385, 1385 (Fed. Cir. 2008)*) Claims 1-5, 11, and 23 are not tied to a particular machine or apparatus nor do they transform a particular article into a different state or thing; therefore, claims 1-5, 11, and 23 are non-statutory under § 101. It is also noted that the mere recitation of a machine in the preamble with an absence of a machine in the body of a claim fails to make the claim statutory under 35 U.S.C. § 101, as seen in the Board of Patent Appeals Informative Opinion *Ex parte Langemyr et al.* (Appeal 2008-1495), http://www.uspto.gov/web/offices/dcom/bpai/its/fd081495.pdf . The amendment of claim 1 does not overcome the rejection under § 101 since "at least one of the steps of identifying a plurality of predictive variables, calculating percent gains, and creating a database scoring algorithm" is performed by a computer. The step of "identifying" may merely involve retrieving predictive variables from a database, which would amount to nothing more than insignificant post-solution activity. Note that claims 24 and 25 further define the step of identifying as including a significant calculation step(s); therefore, claims 24 and 25 are deemed to be statutory under 35 U.S.C. § 101.

Claims 6-8 are directed toward an article of manufacture; however, the preamble recites that the instruction "when implemented by a general purpose computer, cause the computer to implement the steps of..." The word "implement" may be interpreted more broadly than the term "execute." "Implementing" steps may be more of a procedural establishment of steps as opposed to an active execution of the steps. For example, the implementation of rules and regulations may merely put the framework of the rules and regulations into place. In light of this broader interpretation of

"implementing" steps, the steps of the claims are not clearly machine-*executable*, thereby rendering the claims non-statutory.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-5, 11, 24-26, and 28-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 sets forth a “method for identifying from demographic data those individuals in a population having a greater probability than other individuals in the population of influencing the choices made by others” in the preamble; however, the body of the claim fails to actually identify these specific individuals in the population from demographic data. The body does not carry out what the preamble set out to do, thereby rendering the scope of the claim vague and indefinite. Dependent claims 2-5, 11, and 24-25 fail to remedy this problem and therefore inherit the same rejection. Note that dependent claim 23 does apply the database scoring algorithm to the demographic data for the second population to generate a group of influential individuals; therefore, claim 23 is not subject to this particular rejection.

Similarly, claims 26, 28, and 29 suffer from the same problem (as seen in claim 1); however, claim 27 is not (for the reasons mentioned in regard to claim 23).

Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-8, 11, and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burson-Marsteller's e-fluentials[SM] research, as disclosed in (1) Burson-Marsteller's archived e-fluentials web site, retrieved from [URL: http://web.archive.org/…/efluentials.com…], herein referred to as "Burson-Marsteller's e-fluentials[SM] research," (2) the article "Ninety Percent of Online Influentials Turn to Company Web Sites For Corporate Information, But Only 17 Percent Find Them Credible," herein referred to as "Ninety Percent," and (3) Burson-Marsteller's "The e-fluentials," *in view of* Official Notice [now admitted prior art], and *further in view of* Lambert et al. (U.S. Patent No. 6,904,409). The web pages have been archived by web.archive.org on June 1, 2002, February 3, 2003, and February 15, 2003. "Ninety Percent" makes specific reference to the efluentials web site http://www.efluentials.com and to Burson-Marsteller's e-fluentials[SM] research and, therefore, is deemed to provide further information regarding features inherent to Burson-Marsteller's e-fluentials[SM] research.

E-fluentials discloses a method for identifying from demographic data those individuals in a population having a greater probability than other individuals in the population of influencing the choices made by others comprising:

[Claims 1, 6, 26] a. determining if each individual in a first population is influential (Burson-Marsteller's e-fluentials^{SM} research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. "Representing 10% of the online population, approximately 11 million users, this group reaches more people on more topics than the average online users." Pages 5-23 show the results of an E-fluential analysis);

[Claims 2, 7] wherein determining if each individual in the first population is influential comprises:

a. formulating queries to be answered by an individual in the first population such that the answers by an individual in the population indicate whether the individual has a greater probability than other individuals in the first population of influencing choices made by others (Burson-Marsteller's e-fluentials^{SM} research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. "Representing 10% of the online population, approximately 11 million users, this group reaches more people on more topics than the average online users");

b. providing the queries to individuals in the first population (Burson-Marsteller's e-fluentials^{SM} research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential; Page 3 -- E-fluential quiz questions are shown); and

c. analyzing the answers by the individuals in the first population to determine whether each of the individuals in the first population has a greater probability than other individuals in the first population of influencing choices made by others (Burson-Marsteller's e-fluentials[SM] research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. Pages 5-23 show the results of an E-fluential analysis);

[Claims 3, 8] wherein the choices made by others are selected from the group consisting of:

consumer product decisions, consumer service decisions, political issue decisions, political candidate decisions, personal finance decisions, investment decisions, real estate decisions, insurance decisions, travel decisions, and leisure decisions (Burson-Marsteller's e-fluentials[SM] research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., a decision relating to politics, and making friends online, e.g., a leisure decision);

[Claim 4] wherein the queries are based on factors selected from the group consisting of:

written or called any politician at the state, local, or national level; attended a political rally, speech, or organized protest of any kind; attended a public meeting on town or school affairs; held or run for political office; served on a committee for some local organization; served as an officer for some club or organization; written a letter to the editor of a newspaper or magazine or called a live radio or TV show to express an opinion; signed a petition; worked for a political party; made a speech; written an article

for a magazine or newspaper; and been an active member of any group that tries to influence public policy or government (Burson-Marsteller's e-fluentials[SM] research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., writing a politician (who is understood in the United States as being at the state, local, or national level), and sending e-mails to well-known news and media companies such as Time, Newsweek, or CNBS, e.g., writing a letter to a newspaper or magazine. The role of the recited editor is not defined in such a way that it affects the structure or functionality of the claimed invention; therefore, any individual who receives e-mail at a well-known news and media company from the potential E-fluential individual can be interpreted as the recited "editor");

[Claim 5] wherein the queries are based on factors selected from the group consisting of:

written or called any politician or contacted any government official at local regional or national level; attended a political rally, speech or event; attended a public meeting on town or school affairs; led or served on a committee on some local organization; written a letter to the editor of a newspaper or magazine or called a live radio or TV show to express an opinion; made a speech or gave a talk to a group; been an active member of a group that tries to influence public policy or create change in the community; asked a question in a public meeting; made a complaint to a store, company, or organization; made a sizable donation to a local or national organization; attended business lunches or dinners on a regular basis, and organized a special social event (Burson-Marsteller's e-fluentials[SM] research: Page 3 -- An individual is inquired

about sending e-mails to politicians, e.g., writing a politician (who is understood in the United States as being at a local, regional, or national level));

[Claim 11] wherein the additional informational data is based on factors selected from the group consisting of:

household size, household income, occupation, presence of young adult in household, retail purchase activity, political affiliation, corrective lenses, golf participant, cd player owner, personal or home computer owner, pc operating system type, religious or inspirational reader, religiously active, active in theater or performing arts, active in general arts or culture, active in current affairs or politics (Burson-Marsteller's e-fluentials^{SM} research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., active in politics).

Regarding claims 1, 6, and 26, the Burson-Marsteller's e-fluentials^{SM} research selects e-fluentials using a predictive algorithm based on their earlier research ("Ninety Percent": ¶ 7). This research has been used to identify which characteristics (i.e., variables) are most closely associated with e-fluentials ("Burson-Marsteller's e-fluentials^{SM} research": Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential." (Pages 5-23 show the results of an E-fluential analysis). "The e-fluentials" discusses how demographics can be used as part of the analysis differentiating e-fluentials from the general online population, e.g., based on age, income, and level of education ("The efluentials": page 10). "The efluentials" states, "The overall similarity of the two populations means that e-fluentials cannot

easily be identified by demographics alone" ("The efluentials": page 10), which implies that demographic data and corresponding demographic variables are used, in addition to other information, to differentiate e-fluentials from a general population.

Further regarding claims 1, 6, 7, 23, 26, and 27, while the e-fluential references do not expressly disclose how the predictive algorithm is performed, it remains evident from these references that a smaller group of the most influential people are identified based on a collection of characteristics (or variables) normally associated with the most influential people in a group. For example, the e-fluentials web site explains that e-fluentials frequently perform the activities that are the subject of the quiz used to identify e-fluentials, such as sending e-mails to politicians and well-known news and media companies (Burson-Marsteller's e-fluentials^{SM} research: pages 3, 11, and 23) and similar assessments are made using demographic information ("The efluentials": page 10). Since these variables are determined to be useful and predictive of the most influential people in a group, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the e-fluentials research to provide demographic data for each individual in the first population, wherein the demographic data corresponding to a set of demographic variables and identify a plurality of predictive variables from the set of demographic variables such that the demographic data corresponding to the plurality of predictive variables substantially correlates to an individual in the first population being determined to be influential in order to practically apply Burson-Marsteller's past research to make future predictions regarding which people are the most influential within a group,

thereby perpetuating the usefulness of such research over time. Additionally, Official Notice is taken that it was old and well-known in the art of predictive modeling at the time of Applicant's invention to validate predictive variables (used to create an algorithm) on a second group of test subjects [now admitted prior art]; validation of the predictive variables helps to ensure that the model is taking into account the most effective variables at making accurate predictions [now admitted prior art]. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify e-fluentials' predictive model to incorporate the step of validating the plurality of predictive variables to determine a final set of predictive variables and to create a database scoring algorithm (e.g., by providing demographic data for a second population, wherein the demographic data for the second population corresponds to the final set of predictive variables and applying the database scoring algorithm to the demographic data for the second population to determine a group of influential individuals, wherein each test data vector corresponds to an individual in the second population, wherein the group of influential individuals represent a subgroup of the second population that is predicted to have a higher probability of being influential with respect to the second population in general) in order to help ensure that the model is taking into account the most effective variables at making accurate predictions.

Further regarding claims 1, 6, and 26, the e-fluential references disclose the step of reformatting the plurality of predictive variables into numeric representations of gains ("Burson-Marsteller's e-fluentials^{SM} research": Figs. F through K show percentage gains

in activities, i.e., predictive variables, engaged in by e-fluentials versus the general online population; "The e-fluentials": Page 10 shows percentage gains related to varying demographics, i.e., predictive variables, more commonly representative of e-fluentials versus the general online population). However, the e-fluential references do not explicitly disclose the details of calculating percent gains for each predictive variable as a measure of the correlation between the predictive variable and whether a person is an influential and creating a database scoring algorithm based upon the plurality of predictive variables and the percent gains. Lambert creates models to predict customer behavior. Predictive models are generated based on the most statistically relevant variables. Only those variables deemed to have greater discriminating power for a particular model are included in the model. Variables that do not impart additional insight are omitted from the model (columns 4, 10). When identifying more influential members of a population, variables showing a higher percent gain compared to the general population are more likely to better discriminate the influential individuals from non-influential individuals. By selecting the best discriminating variables for identifying influential individuals, the respective model is likely to be more accurate. Furthermore, a percent gain provides a relative measure for assessing significance. For example, a change in 5 percentage points is more significant for a measurement being made on the order of tens versus on the order of hundreds or thousands. Both e-fluentials and Lambert are directed toward creating an optimal model(s) of user behavior, based on the best variables for differentiating a set of users from one another when it comes to certain behavior; therefore, the Examiner submits that it would have been obvious to

one of ordinary skill in the art at the time of Applicant's invention to modify e-fluentials' predictive model to incorporate the steps of calculating percent gains for each predictive variable as a measure of the correlation between the predictive variable and whether a person is an influential and creating a database scoring algorithm based upon the plurality of predictive variables and the percent gains in order to create a more accurate model for predicting which members of a population will likely be the most influential individuals within that population.

As per claims 1, 6, and 26, the e-fluential references do not explicitly use a memory and a computer/processor to perform at least one of the steps of identifying a plurality of predictive variables, calculating percent gains, and creating a database scoring algorithm; however, Lambert utilizes a storage medium and a computer to carry out Lambert's invention (col. 16, lines 38-67), which generally includes the steps of identifying predictive variables, calculating statistical significance, and creating a predictive model. Official Notice is taken that it was old and well-known in the art of automation to utilize a computer/processor to perform a method previously performed manually; this typically facilitates more rapid and accurate calculations and analyses. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the e-fluentials' predictive model such that at least one of the steps of identifying a plurality of predictive variables, calculating percent gains, and creating a database scoring algorithm is performed by a computer, thereby yielding greater accuracy and speed when determining related calculations and analyses. It has generally been recognized that broadly providing an

automatic means to place a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner* 262 F.2d 91, 95 120 USPQ 193, 194 (CCPA 1958). As a matter of fact, using a computer to perform steps that the prior art discloses as commonly performed manually is simply "the adaptation of an old idea or invention...using newer technology that is commonly available and understood in the art...," as explained in *Leapfrog Enterprises, Inc. v. Fischer Price, Inc.,* 485 F.3d 1157, 82 USPQ2d 1687 (Fed. Cir. 2007) at 1691. The Leapfrog decision "found it obvious to combine the Bevan device [an earlier, more basic prior art device] with the SSR [a system with more modern electronic components] to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost." (*Leapfrog*, at 1691) This decision further supports the Examiner's assertion regarding the obviousness of performing manual steps using a computer.

As per claims 7, 24, 25, 28, and 29, the e-fluential references disclose the step of reformatting the plurality of predictive variables into numeric representations of gains ("Burson-Marsteller's e-fluentials^{SM} research": Figs. F through K show percentage gains in activities, i.e., predictive variables, engaged in by e-fluentials versus the general online population; "The e-fluentials": Page 10 shows percentage gains related to varying demographics, i.e., predictive variables, more commonly representative of e-fluentials versus the general online population). However, the e-fluential references do not explicitly disclose the details of calculating for each demographic variable a response index value, said response index value being indicative of the strength of the correlation

between a demographic variable and influential status and selecting as potential predictive variables those demographic variables having an index value exceeding a pre-determined threshold index value (claims 7, 24, 25, 28, 29), and calculating for each demographic variable a response rate and selecting as predictive variables those demographic variables having both an index value exceeding a pre-determined threshold index value, and a response rate exceeding a pre-determined response rate threshold value (claims 25 and 29). Lambert creates models to predict customer behavior. Predictive models are generated based on the most statistically relevant variables. Only those variables deemed to have greater discriminating power for a particular model are included in the model. Variables that do not impart additional insight are omitted from the model (columns 4, 10). Lambert has an index of stratification variables to assess which types of variables are most significant in a model. Variables meeting a certain model threshold are included in that respective model (column 4). Both e-fluentials and Lambert are directed toward creating an optimal model(s) of user behavior, based on the best variables for differentiating a set of users from one another when it comes to certain behavior; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify e-fluentials' predictive model to incorporate the steps of calculating for each demographic variable a response index value, said response index value being indicative of the strength of the correlation between a demographic variable and influential status and selecting as potential predictive variables those demographic variables having an index value exceeding a pre-determined threshold index value

(claims 7, 24, 25, 28, 29), and calculating for each demographic variable a response rate and selecting as predictive variables those demographic variables having both an index value exceeding a pre-determined threshold index value, and a response rate exceeding a pre-determined response rate threshold value (claims 25 and 29) in order to create a more accurate model for predicting which members of a population will likely be the most influential individuals within that population.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tribbey, Michael D., "Creativity of the Superintendent of Schools and the Practice of Strategic Planning by Local Education Agencies." University of Kansas, Dissertation DAI-A 41/07 (abstract only), page 2875, January 1981.

McCaffrey, James David, Jr., "Instructor Personality, Course Type, and Teaching Effectiveness in Higher Education." University of Southern California, Dissertation DAI-A 56/09 (abstract only), page 3472, March 1996.

Definition of “absolute error” and “relative error” from James/James. Mathematics Dictionary (5th ed). Chapman & Hall, page 151, © 1992.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692